BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MARY E. WALKER	}
Claimant VS.	Docket No. 205,886
BEECH AIRCRAFT CORPORATION Respondent Self-Insured	DOCKET NO. 203,880
AND	\
WORKERS COMPENSATION FUND	}

ORDER

Respondent appeals from a preliminary hearing Order wherein Administrative Law Judge Nelsonna Potts Barnes granted claimant benefits finding claimant had established that it is more probably true than not she suffered accidental injury while working for respondent and that her injury is an aggravation of her preexisting condition and, thus, compensable. Judge Barnes also found claimant had submitted timely written claim under K.S.A. 44-520a for an injury beginning in 1991 and continuing each and every working day thereafter during claimant's employment with respondent.

ISSUES

- (1) Whether claimant suffered accidental injury arising out of and in the course of her employment on dates alleged; and
- (2) Whether claimant submitted timely written claim as required by K.S.A. 44-520a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented and for purpose of preliminary hearing the Appeals Board finds as follows:

The issues above enumerated are listed in K.S.A. 44-534a as jurisdictional and, thus, this matter is properly before the Appeals Board.

The Appeals Board finds, based upon a review of the evidence, that the Order of Administrative Law Judge Nelsonna Potts Barnes should be affirmed. Claimant, an employee of respondent for nearly twenty (20) years, began experiencing problems with her right ankle in 1991. She continued working with respondent, standing eight (8) hours plus per day on concrete floors, with increasing pain over a several year period.

Claimant first sought medical care in 1991, but filed no written claim with respondent at that time.

Claimant continued working for respondent and in 1993 contacted the respondent's first aid department regarding the ongoing difficulties associated with her ankles. On September 18, 1995, an Employer's Report of Incident was prepared regarding claimant's bilateral ankle symptoms.

Respondent contends claimant did not suffer accidental injury arising out of and in the course of her employment. However, the medical records of Dr. Steven J. Howell show claimant's work on concrete floors eight (8) hours plus per day was, and continues to be, an aggravating factor in claimant's ongoing symptomatology. As such, the Appeals Board finds that claimant has proven by a preponderance of the credible evidence that her ankle conditions do arise out of and in the course of her employment with respondent.

Respondent next contends claimant failed to submit timely written claim as required by K.S.A. 44-520a. The pertinent language of K.S.A. 44-520a requires that the employee serve upon the employer a written claim for compensation within two hundred (200) days after the date of the accident, or within two hundred (200) days after the last date of payment of compensation. Respondent argues claimant's date of accident should either be 1991, when she first obtained medical treatment for her ankles, or March 18, 1993, when she approached respondent's first aid department regarding her symptomatology. Respondent's argument fails. Date of accident, when dealing with a series of microtraumas, has been recently addressed by the Kansas Court of Appeals in Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), and in Condon v. The Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995). In both Berry and Condon the Court of Appeals dealt with micro-trauma injuries which occurred over long periods of time and which the court found, "the origin could not be determined as to a specific date." Condon, *supra*.

Numerous possibilities for determining the date of accident were discussed in <u>Condon</u> and <u>Berry</u>. In <u>Berry</u> the bright line rule establishing the last day claimant worked for respondent as the date of accident was felt to offer simplicity and uniformity in dealing with carpal tunnel syndrome cases. In <u>Condon</u>, while dealing with carpal tunnel, the court was also faced with decisions regarding micro-trauma injuries in claimant's wrist, arm, elbow, shoulder and neck. While not specifically carpal tunnel syndrome these conditions were clearly repetitive micro-trauma injury situations where it is difficult to establish with certainty the onset of the micro-trauma injuries.

In this case, the 1991 and March 18, 1993 dates, while significant, do not, according to the medical evidence, in any way interrupt or alter the apparent progression of claimant's ongoing symptomatology. More significant dates to be considered would be the August 11, 1995 examination by Dr. Murphy, resulting in permanent work restrictions to claimant or, as found by the Administrative Law Judge, the September 18, 1995 date wherein claimant caused an Employer's Report of Incident to be prepared showing claimant's ongoing symptomatology. Utilizing either date, the requirements of K.S.A. 44-520a are met as both dates are within two hundred (200) days of claimant's submission of her written claim on September 18, 1995.

Following the logic of the Appeals Court in both Berry and Condon the Appeals Board finds claimant has submitted written claim in a timely fashion as required by K.S.A. 44-520a and the Order of Administrative Law Judge Nelsonna Potts Barnes dated December 12, 1995, should be, and is hereby, affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated December 12, 1995, should be, and is hereby, affirmed and remains in full force and effect.

IT IS SO ORDERED.
Dated this day of February 1996.
BOARD MEMBER
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BOARD MEMBER
BOARD MEMBER

c: Kelly W. Johnston, Wichita, Kansas David S. Wooding, Wichita, Kansas Marvin Appling, Wichita, Kansas Nelsonna Potts Barnes, Administrative Law Judge Philip S. Harness, Director